VIRGINIA LAW REGISTER

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Judge John M. White.

The death of Judge John M. White, of the Eighth Judicial Circuit, removes from the Bench of this Commonwealth one of its purest and ablest occupants. Ere age had begun to dim the force of his intellect, or the weight of years to lessen the power of his mind, he left the tribunal over which he presided for so many years to stand at the judgment bar of the Eternal Court, for whose decision he had made all the preparation a useful Christian life could require.

Elected County Judge of the great county of Albemarle in 1885 he served as such with marked ability from January, 1886, until elected Judge of the Eighth Judicial Circuit under the Constitution of 1902.

As Judge he was noted for calm dignity, great patience and kindliness, and an earnest desire to do exact justice. He cared very little for technicalities and always sought the very right of every case upon which he was called to pass. He never rendered a hasty decision, but carefully considered the arguments of counsel and then very briefly stated his conclusions, which were seldom erroneous.

The lawyers who practiced at the bar of his courts learned to look upon him as a friend and watched with interest and admiration his steady growth in judicial strength and power.

A man of unusual business ability, he occupied in his home community one of the highest places, and in every relation of life he was true and steadfast. The loss to his State, county and community caused by his death is indeed a grievous one.

All Honor to Governor Mann.

No lover of justice or of well-ordered government can fail to pay tribute to the stern, unflinching sense of duty which has characterized Governor Mann in refusing to commute the sentence of the Allens now under conviction of one of the most dastardly murders ever committed in this Commonwealth. The crime for which these men are to die was one which struck not only at human life, but at the very source and fountain of law and order. It is a strange and sad commentary on human nature and in our humble judgment a serious reflection upon some of our Virginia people, that in the face of a conviction by a jury after a fair and impartial trial, and after our Supreme Court—the tribunal of last resort—had solemnly approved it, such a wide-spread and almost hysterical effort should have been made to invoke executive clemency. It almost appears as if some touch of madness has attacked some of our people Preachers and women and men who ought to have known better, united in frantic appeals and in some instances almost made threats, with the object of compelling the Governor to brush aside the verdict of a jury and the decision of our Supreme Court. The "People" it was claimed, demanded such action. Some one spoke of the murder of Judge Massie as a judicial "recall." Evidently these clamorers for executive clemency wanted a "referendum" for his murderers.

It was a grave, an awful responsibility which rested upon our Executive. No one who knows the kindly, generous nature of the man can doubt for one instant that every instinct of that nature cried out for mercy. But to his lasting honor he shut his eyes to everything but his plain, unquestioned duty and in the face of a clamor unprecedented in our State, refused to stretch the Executive prerogative and allowed the law to take its course. It required manhood; it required firmness; it required an unflinching sense of right and justice and duty, and, thank God, Governor Mann possessed these qualities and met the issue without one moment's hesitation. He heard patiently; he deliberated calmly, and he did his duty, and a grateful Commonwealth should honor him for it.

No man we believe in this State has anything in his heart but

pity for these unfortunate men. No man would desire their death except for the fact that the law and justice and the preservation of good order and human life demanded it. We pity them first for their crime; then for their punishment, but woe to the nation which allows pity to gloze over crime, or sentimentality to excuse murder. And whilst pitying them our heart goes out to the widow and children of an upright judge slain by these men whilst in the discharge of his duty. We pity the community in which such an awful exhibition of lawlessness was exhibited and we pity the Commonwealth whose good name was besmirched and brought into ill-repute by this hideous act. And above all we hear that fearful sentence pronounced under the shadow of Sinai and which is still and ever should be remembered when murderers stand at the bar of justice: "Whosoever sheds man's blood, by man shall his blood be shed."

Omitted Legislation.

Our attention has been frequently called here lately to a serious omission in our laws in regard to criminal punishment for slander. It is a remarkable fact that the State of Virginia is amongst the few states in the Union which does not by statute make mere words, no matter how offensive, not reduced to writing, indictable. At common law both before and since the fourth year of the reign of James I criminal prosecutions for spoken words were not unknown, but as they arose under the Statute of *Scandalum Magnatum* they furnished neither precedent nor authority in the United States, because, as is well known, those statutes made it penal "to speak or to tell any false news, lies or other such false things of the prelates, dukes, earls, barons and other nobles and great men of the realm, and also of the Chancellor, Treasurer, Clerk of the Privy Seal, Stewards of the King's House, the Justices of one Bench or the other, and other great officers of the realm." The spirit of these several enactments originated in the early martial character of the British constitution exacting absolute subordination to the over-lords, and so is repugnant to and inconsistent with the institutions of

this country. Besides, in the United States we have no prelates, dukes, earls, barons or other nobles and as has been facetiously said, no "great men" in the sense which pertains to that description of persons in the British statutes. Therefore, except in the case of such persons as are embraced in the Statute of Scandalum Magnatum, there was no way at common law, nor is there any way now in Virginia, to fix criminal responsibility on an evily-disposed coward who usually adopts spoken words to attack a person who may have incurred his displeasure. The Legislature has made it a misdemeanor to publish a person's photograph for advertising purposes, and is there any reason why it should not also be made a crime to reflect on the personal character or conduct of an innocent person, especially a woman, through the medium of oral slander. Our Statute of Insulting Words was passed to suppress duelling; it would seem that these same words concluding with a penalty would much more effectively accomplish the purpose for which this statute was passed than by merely allowing a civil action for damages. We were under the impression that there had been an enactment by the Virginia Legislature making the speaking or writing of insulting words reflecting upon a female an indictable offense, but we wasted a precious half hour hunting for the statute, to find in the classic language of Mrs. Gamp that "there was no sich personage." The brand of a villain should certainly be placed upon the person who traduces, whether orally or in writing, the character of a good woman, and his fate should be a felon's stripes and prison bars, and any corporeal punishment which he might receive from the friends of the injured party ought only to be regarded as cumulative punishment. Of course persons having means can always be reached by a suit for damages, but we do not believe this is enough. We think that slander of an innocent party ought to be made criminal. We suggest for the consideration of our future legislators a law as follows: "If any person shall use, utter or publish any words which from their usual construction or common acceptation impute to another person any lewd, disgraceful or infamous conduct, or which impute or charge the commission of any crime or misdemeanor, whether such crime or misdemeanor be one at com-

mon law or under the statute, if such imputation be untrue he shall be deemed guilty of a felony and be punished by imprisonment in the State penitentiary for not more than five nor less than one year, or in the discretion of the jury may be punished by imprisonment in the county jail for not more than one year and a fine not exceeding one thousand dollars."

Reformation of Judicial Procedure.

It seems that the monstrous defects that exist in our system of judicial procedure, which has been aptly termed the "key of the temple of jurisprudence," have at last quickened the conscience of the whole legal profession, due, however, we regret to admit, to the persistent clamor for reform from the laity. But it is especially to our system of appellate procedure that we refer because of the vast number of points on this branch of the practice adjudicated in 113 Virginia, most of which are merely cumulative. Nor do we intend to speculate on the possible effect of the multiplied accumulation of case law upon the rule of precedents. But it must have become manifest to any one who handles the annual cases handed down by the appellate courts in this country that a growing, practical necessity has arisen for controlling and limiting the multiplication of printed judicial opinions. Written opinions are with us a matter of course in every appellate court, in which the judges are generally required by law to give their reasons; whereas in England the judges announce their opinions by word of mouth from the bench and they are transcribed by reporters. What possible benefit can accrue from writing an opinion upon a well-settled proposition of substantive or adjective law and backing it up by copious citations from text-books and opinions from different parts of the country, when it is plain that if this is kept up, the present system of reporting cases for purposes of precedent must ultimately break down when the overwhelming number of printed reports becomes a burden rather than a benefit. Lord Coke says: "If judges should set down the reasons and causes of their judgments within every record that immense labor should withdraw

them from the necessary service of the commonwealth and their records should grow to be like elephantini libri of infinite length and in mine opinion lose some of their present authority and reverence and this is worthy for learned and grave men to imitate." In Georgia some relief is afforded by the State allowing the appellate courts merely to write headnotes without further elaboration in the opinion, but a vast number of even these headnote opinions are upon plain, well-settled questions of practice and substantive law and of no earthly benefit to any one as a precedent. If any one doubts the correctness of our views as here set forth he has only to take up at random any of the late volumes of our reports and count the number of cases which to his certain knowledge adjudicate well-settled principles. The only effective remedy lies in vesting discretion in the courts as to when former written opinions shall be handed down; with instructions, however, to refrain from filling up the reports with discussions of axiomatic propositions of law, and this will especially apply to almost every per curiam opinion. The statement has been made by one speaking with authority that the English digest for twenty years has not contained the title "Appellate Procedure," whereas the statistics gathered by the West Publishing Company show that points of appellate practice in this country numerically top the list and nearly every volume of the Reporter has from two to four pages devoted to "Appeal and Error" alone. As we noted in a previous number of the REGISTER the Supreme Court of the United States has adopted a system of what it calls "memorandum opinions." These are brief and concise opinions, rarely over a page in length and we note their number is increasing with each set of the advanced sheets which we receive. In the case of Matheson *v.* United States, decided by the Supreme Court of the United States, Feb. 24th, 1913, Judge Lamar uses the following language, which we think puts the matter in about as concise shape as it can be presented: "It would serve no useful purpose to discuss the ruling as to burden of proof and the definitions of insanity, since they present no new propositions; in both these matters the Court followed cases in which those steps have been fully treated. He instructed the jury that while the burden

of proof was upon the defendant to establish the fact that he was insane at the time of the killing yet they could not convict if they had a reasonable doubt as to his sanity. Davis *v.* United States, 160 U. S. 469. His definition of insanity and as to what would relieve the defendant of criminal responsibility was in accord with the principles declared in Davis *v.* United States, 165 U. S. 378."

It seems to us that a great deal of space would be saved by the courts in delivering their opinions where there had been previous decisions covering the matter or where the question was one of well-established law, to simply do as Judge Lamar has done, refer to the adjudicated cases and say no more.

Interstate Commerce and State Statutes.

If we were disposed to be slangy we would say that the Supreme Court of the State of Arkansas "got it in the neck" at the hands of the Supreme Court of the United States on February 24th, 1913. On that day the State Supreme Court of Arkansas was reversed in six cases. In one the United States Supreme Court in accordance with its decision in the Express Rate case decided that railroad companies carrying household goods from one State to another may make valid contracts to limit their liability. In another case they held the "Demurrage" Statute of Arkansas invalid because of the Hepburn Act—the court holding that now a State cannot penalize for failure to deliver interstate freight at the termination of an interstate shipment. St. Louis, etc., R. Co. *v.* Edwards.

In four other cases—Crenshaw *v.* Arkansas, Gannaway *v.* Same, Rogers *v.* Same and Barnhill *v.* Same—it was held that the State could not impose a license tax on the sale of lightning rods, steel stove ranges, clocks, pumps, and vehicles, nor regulate the sale of same in accordance with a State statute in any case where the peddlers or sellers of same were engaged in interstate commerce. In the Crenshaw case the court makes an admirable collection of the leading cases on this subject and shows plainly the helplessness of the State to tax or regulate the

traffic or sale of any article offered for sale which is manufactured in another State from that in which it is offered. A small crumb of comfort was thrown the State in the case of Hampton, etc., *v.* St. Louis, etc., R. Co., decided the same day, in which an act of the Arkansas Legislature passed April 19th, 1907, providing penalties for failure of a railroad to furnish cars upon the application of shippers and forbidding discrimination between shippers in furnishing such cars, was held to be valid. But this decision was based upon the fact that in the case at bar only conjectural and academic objections were suggested against the act and that the act did not indicate that the Legislature imposed a duty regardless of the railroad's duty to other shippers or of a situation due to some unusual and unavoidable condition which made it unreasonable to penalize the railroad for non-compliance. We predict, however, that this act will again have to run the gauntlet of the Supreme Court justices if the case comes up in a little different shape.

The Supreme Court of Texas also received a "set back" in the case of Wells Fargo & Co. *v.* Neiman-Marcus Co., the United States Supreme Court holding that an express company had the right to limit its liability according to valuation expressed in its receipt. It is hard to see how the Supreme Court of Texas in the light of Adams Express Co. *v.* Croninger, 226 U. S. 491, could have rendered the decision which was reversed in the case under discussion.

Graduated License Taxes.

Our Supreme Court was more fortunate than Arkansas or Texas. In the case of Bradley *v.* City of Richmond the United States Court sustains our Supreme Court in holding that the graduated license tax imposed upon brokers, private bankers, auctioneers, etc., by an ordinance of the city of Richmond was valid and not in conflict with the Fourteenth Amendment. The contention of the "private bankers" in this case was that the ordinance committed the classification of the persons taxed to the finance committee of the council, advised and assisted by the "commissioner of revenue, the city tax

collector or any city officer," and that this did not meet either "the due process or equal protection" clause of the Amendment. But the Supreme Court of the United States shows that in the very ordinance there was no arbitrary discrimination and that ample right was given to be heard with a right to review by the council itself. The plaintiff also made the same defence he had made in the State court—that he was classified in such a manner as to subject him and his business to a higher tax than was required of other private bankers. But the United States Supreme Court sustains our own court in holding that the plaintiff had not shown that the other bankers so favored were in his class. He was a lender at high rates of interest upon salaries and household furniture and this put him in that class of birds who, in the language of Lord Dundreary, "flock by themselves."